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10/792,235

03/03/2004

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12/02/2008

EXAMINER

FETSUGA, ROBERT M

ART UNIT

PAPER NUMBER

3751

MAIL DATE

DELIVERY MODE

12/02/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/792,235

**Applicant(s)**

GAMBLA ET AL.

**Examiner**

Robert M. Metsuga

**Art Unit**

3751

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on June 18, 2008 & November 10, 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 and 7-11 is/are pending in the application.
- 4a) Of the above claim(s) 3 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 5, 7-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/06)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

1. The form of claims filed November 10, 2008 still fails to comply with Rule 121. The status identifiers of claims 4 and 10 should be "previously presented" (or equivalent). The noted claims are not directed to a non-elected embodiment and cannot therefore be simply "withdrawn" by applicant. The claims will be treated on their merits.
2. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 is redundant to claim 5.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which

forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1, 2 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Masters et al.

The Masters et al. (Masters) reference (Figs. 1 and 2) discloses a spray shield comprising: a wall 101; a flange 113; and a domed top (illustrated), as claimed. Re claim 1, the wall height appears to be within the recited range (Fig. 4). Re claim 4, the flange 113 would be horizontal when the shield is mounted on a horizontal toilet bowl rim (col. 3 lns. 54-57). Furthermore, the flange 113 is integral (col. 2 lns. 25-27).

Applicant argues at pages 7-8 of the response filed June 18, 2008 Masters does not teach a single piece of plastic as recited in claim 1. This argument is found unpersuasive as not being commensurate with the scope of claim 1.

5. Claims 1, 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Masters.

Re claim 1, the choice of size would appear an obvious choice to be made to the extent the recited size is not already disclosed by Masters. Re claim 2, to construct the flange of the Masters spray shield in a perpendicular manner would have been obvious because Masters teaches this feature as depicted in Fig. 4. Re claim 4, it would have been obvious to construct the flange of the Masters spray shield in an integral manner because Masters teaches this feature at column 2, lines 25-27.

6. Claims 5, 7, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Masters and Whitman.

Re claim 5, although the wall and domed top of the Masters spray shield does not include a handle, as claimed, attention is directed to the Whitman reference which discloses an analogous spray shield which further includes a wall 24 and domed top 42 having a handle 48. Therefore, in consideration of Whitman, it would have been obvious to one of ordinary skill in the spray shield art to associate a handle with the Masters wall and domed top in order to facilitate manipulation. Re claim 7, the choice of size would appear an obvious choice to be made to the extent the recited size is not already disclosed by Masters.

Applicant argues at page 10 of the response there is no "teaching or suggestion" to add a handle to the Masters spray shield. The examiner disagrees as evidence to support a prima facie case of obviousness has been set forth supra.

7. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Masters and Whitman as applied to claim 5 above, and further in view of Gambla et al.

Re claim 8, although the wall of the Masters spray shield does not include an image, as claimed, attention is directed to the Gambla et al. (Gambla) reference which discloses an analogous spray shield which further includes a wall 124 having

an image 120. Therefore, in consideration of Gambla, it would have been obvious to one of ordinary skill in the spray shield art to associate an image with the Masters wall in order to provide entertainment. Re claim 9, the choice of image type would appear an obvious choice to be made.

Applicant has not substantively argued this ground of rejection in the response.

8. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

9. The grounds of rejection have been reconsidered in light of applicant's arguments, but are still deemed to be proper.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday. The Office central fax number is 571/273-8300.

/Robert M. Fetsuga/  
Robert M. Fetsuga  
Primary Examiner  
Art Unit 3751